



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
JULY 7, 2009
(Approved as written 9/1/09)**

PRESENT: Jack Dearborn, Vice Chairman; Forrest Esenwine; June Purington; David Ruoff; Neal Kurk, Alternate; Elwood Stagakis, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Shannon McManus; Doug Wilkins; Hugh Durack; Ginger Esenwine; Michael Kaye; Stephen Antoniadis; Margaret Moore; Rob Moore

I. INTRODUCTION:

Vice Chairman Dearborn called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Vice Chairman Dearborn explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items to take up at this time. Vice Chairman Dearborn appointed Neal Kurk as a voting member for the next case.

III. PUBLIC HEARINGS:

Case #0309 New Cingular Wireless (AT & T) (Owner: John J. Moody)
Variance, Article 28, Section 28.9
Variance, Article 32, Section 32.6.1
Variance, Article 32, Section 32.7.1

Applicant is requesting permission to 1) allow ground disturbance within 25 feet of a jurisdictional wetland for construction of a graveled access drive to a wireless telecommunications facility; 2) to allow the height of a wireless telecommunications facility to exceed 25 feet over the average tree canopy height within a 150 foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greater; 3) area variance requiring all ground-mounted wireless telecommunications facilities to be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of 50 feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest; and 4) any other zoning relief required (all if, and to the extent necessary, all rights reserved).

Tax Map 411-290

Forest Road

Doug Wilkins, Attorney from Kreiger and Wilson was present. Attorney Wilkins explained that the last time he was here they went through the application in detail with the Radio Frequency Engineer and the Wetlands Scientist. The reason for this continuation was to re-vamp the application in accordance with the board suggestion. There was an issue regarding the impact of the wetlands. Attorney Wilkins read the letter which provided the square footage of this AT & T project. Attorney Wilkins went through the five points of hardship for article 28.9 as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The installation is well hidden from the surrounding area by vegetation and topography; photo simulations show little visual impact; the 100' monopine design blends with existing trees; appraisal reports submitted in the above cited Daniels case show that wireless towers in settings similar from Forest Road is 764' and 106' from the side property lines thus maximizing distances from residences and surrounding properties; noise reports show appropriate levels for this area; and A&D Klumb Environmental's ("Klumb") DES application and testimony with respect to wetlands on the property demonstrate that no deterioration of wetlands will result. See letter, pp 7-8 and Letter exhibits 4 D, E, F and 5; Klumb testimony.
2. That the granting of the variance will not be contrary to the public interest because: The Klumb testimony and exhibits establish that there will be no adverse impact upon wetlands values. Therefore, the WTF conforms to the basic purpose of the ordinance (wetlands protection). Moreover, the affected wetland area is small. Adding a culvert to the existing access road is an improvement to the drainage of the area and therefore serves the public interest. Moreover, the resulting WTF will also serve (i) serve the public interest by alleviating a significant gap in coverage, allowing collocation, and enhancing communications, including emergency communications with fire, police and EMTs, (ii) conform to the purposes of the Weare Zoning Ordinance by promoting public safety and the general welfare of its residents, without creating any pollution, harm to natural areas, or being obnoxious, offensive or injurious to the neighborhood, (iii) comply with the purposes of Article 28 of the Zoning Ordinance due to the addition of the culvert and the avoidance of wetlands deterioration, and (iv) meet FCC emissions regulations. See Letter, p. 8 and Letter exhibits 4 C, D, E, F and 5. See also Daniels.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restrictions:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The property's special features, including its location and topography, are especially suited to fill the gap in telecommunication coverage in the area (see Daniels); it is narrow, with steep slopes, a relative small area of wetlands, an existing road or path, a large setback from Forest Road and the highest elevation at the rear, which is optimal for radio frequency (RF) needs. It is fairly secluded. To reach the rear of the property for RF purposes, one must cross the small area of wetlands and continue on the existing path within 25 feet of the wetland; by installing the proposed

gravel road along the existing path, the installation of the WTF minimizes environmental damage; the site's steep topography and existing wetlands preclude relocating the access road to an alternative area of the property which would be more damaging. See Klumb DES application and testimony.

- bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: Relocating the proposed gravel road to the other side of the wetland is not reasonably feasible because of the steep topography on the other side. Relocating the proposed road there would cause adverse environmental impact as compared with the proposed gravel road which follows the existing path. Moreover, relocating the proposed road would not afford the opportunity to improve drainage that AT & T proposes should cross through a new culvert. See, Klumb DES application and testimony.
- 4. That through the granting of relief by variance, substantial justice will be done because: AT & T will be able to utilize the uniquely situated property for the proposed facility to provide needed service to a coverage gap along routes 77 and 114, without appreciable adverse effects. See Daniels. The basic goals of the Zoning Ordinance and the wetlands provision are met as stated in #2 above. Any erosion or sedimentation to the wetlands that might occur as a result of work being performed within 25 feet thereof will be mitigated during construction. The risk to the wetlands in establishing the proposed access road is negligible. See Letter, pp 15, 21 and Letter exhibits 3, 4 C, D, E, F, 5: Pollister and Klumb testimony.
- 5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The WTF will promote the public health, general growth, safety and general welfare of the residents of Weare by providing wireless mobile communications that (i) can be relied upon in the event of an emergency, thereby contributing to residents' safety, and (ii) provide a convenience at other times. See Daniels. The proposed WTF will not generate any of the adverse effects addressed by the Zoning Ordinance. Wireless telecommunications use is allowed in the district. The screening and wetlands protection purposes of the Ordinance are fully met, as discussed above. The facility will not be obnoxious nor a nuisance. See Letter, pp. 15, 21 and Letter exhibits 3, 4 C, D, E, F, 5; Pollister and Klumb testimony.

Neal Kurk stated that all of the responses are really geared toward the information in the Planning Board application. Forrest Esenwine and Vice Chairman Dearborn agreed that there needs to be some reference to the use and materials that were discussed the last time.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public at Large: NONE
Other boards: NONE

Being there was no further comments, questions or discussion, Vice Chairman Dearborn closed this portion of the application at 8:03 PM.

CASE DECISIONS: Forrest Esenwine moved to accept point #1; June Purington seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine). Point #2: David Ruoff moved to accept point #2; Forrest Esenwine seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine). Point #3aa: David Ruoff moved to accept point #3aa; June Purington seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine). Point #3bb: David Ruoff moved to accept point #3bb; Forrest Esenwine seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine). Point #4: David Ruoff moved to accept point #4; June Purington seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine). Point #5: David Ruoff moved to accept point #5; Forrest Esenwine seconded the motion. Discussion: Mr. Kurk stated that he will be voting in the affirmative but he doesn't feel this was completely addressed. Mr. Ruoff stated that in addition to what is stated in the information the minimal amount that this is impacting is really referenced in the letter dated June 9, 2009 from Dewberry. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine).

David Ruoff moved to grant the request for a variance from article 28.9 for case #0309; Forrest Esenwine seconded the motion. Vote: 5 in favor (Kurk, Purington, Dearborn, Ruoff and Esenwine)

Attorney Wilkins then went through the 5 points of hardship for Article 32.6.1. The request here is to exceed the height allowed per the ordinance.

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The installation is well hidden from the surrounding area by vegetation and topography; photo simulations show little visual impact; the 100' monopine design blends with existing trees; appraisal reports submitted in the above cited Daniels case show that wireless towers in settings similar from Forest Road is 764' and 106' from the side property lines thus maximizing distances from residences and surrounding properties; noise reports show appropriate levels for this area; and A&D Klumb Environmental's DES application and testimony with respect to wetlands on the property demonstrate that no deterioration of wetlands will result. See letter, pp 15-16 and Letter exhibits 4 D, E, F and 5.
2. That the granting of the variance will not be contrary to the public interest because: The WTF conforms to the basic purpose of the ordinance (screening), because existing height and depth of tree cover and topography is sufficient to screen views of the tower, and the monopine design also accomplishes the same, so there will be no effect on the public interest in granting the waiver. The photo simulations and balloon test confirm the sufficiency of the existing screening. Moreover, the resulting WTF will (i) serve the public interest by alleviating a significant gap in coverage, allowing collocation and enhancing communications, including emergency communications with fire, police and EMTs, (ii) conform to the purposes of the Weare Zoning Ordinance by promoting public safety and the

general welfare of its residents, without creating any pollution, harm to natural areas, or being obnoxious, offensive and injurious to the neighborhood, (iii) comply with the purposes of Article 32 of the Zoning Ordinance due to the WTF's compatibility with the visual and environmental features of the Town, and (iv) meet FCC emissions regulations. See Letter, pp. 16-17 and Letter exhibits 4 C, D, E, F and 5. See also Daniels.

3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property because: The property's special features, including its location and topography, are especially suited to fill the gap in telecommunication coverage in the area (see Daniels); it is narrow, with steep slopes, a relatively small area of wetlands, an existing road, a large setback from Forest Road and the highest elevation at the rear, which is optimal for radio frequency needs. It is fairly secluded. The large number of surrounding trees 90' or higher and the topography at and beyond the rear of the property require a height of 100' to project over the trees and topography and to allow collocation. See Letter exhibit 4.C and Pollister testimony.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: No existing tall structures exist that would provide coverage to the gap. The property's location and features are especially suited to cover the existing coverage gap. Daniels. Lowering the WTF height would impair the performance of the tower because of existing tall trees, the future growth of other trees, and the adverse impact that a shorter tower would have on collocation. The WTF is sited to achieve AT & T's radio frequency needs without being obtrusive. See letter exhibit 4.C, and Pollister testimony.
4. That through the granting of relief by variance, substantial justice will be done because: AT & T will be able to utilize the uniquely situated property for the proposed facility to provide needed service to a coverage gap along routes 77 and 114, without appreciable adverse effects. See Daniels. The basic goals of the Zoning Ordinance are met as stated in #2 above. See Letter, pp. 15, 21 and Letter exhibits 3, 4 C, D, E, F, 5; Pollister and Klumb testimony.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The WTF will promote the public health, general growth, safety and general welfare of the residents of Weare by providing wireless mobile communications that (i) can be relied upon in the event of an emergency, thereby contributing to residents' safety, and (ii) provide a convenience at other times. See Daniels. The proposed WTD will not generate any of the adverse effects addressed by the Zoning Ordinance. Wireless telecommunications use is allowed in the district. The screening and wetlands protection purposes of the Ordinance are fully met, as discussed above. The facility will not be obnoxious nor a nuisance. See Letter, pp. 15, 21 and Letter exhibits 3, 4C, D, E, F, 5; Pollister and Klumb testimony.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public at Large: NONE
Other boards: NONE

Being there was no further comments, questions or discussion, Vice Chairman Dearborn closed this portion of the application at 8:17 PM.

CASE DECISIONS: Point #1: David Ruoff moved to accept point #1; Forrest Esenwine seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #2: David Ruoff moved to accept point #2; June Purington seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #3aa: David Ruoff moved to accept point #3aa; Forrest Esenwine seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #3bb: David Ruoff moved to accept point #3bb; June Purington seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #4: David Ruoff moved to accept point #4; June Purington seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #5: David Ruoff moved to accept point #5; June Purington seconded the motion. Discussion: Mr. Kurk stated that he felt that it is in the spirit of the ordinance as a result of the balloon test this is one of those rare sights this is not in your face and adding 7 feet is really not going to make a difference. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine).

David Ruoff moved to grant the variance for #32.6.1 in case #0309; Forrest Esenwine seconded the motion, all in favor.

Attorney Wilkins then went to Article 32.7.1 (F) and stated that they are seeking a buffer a variance for contiguous dense buffer. They are not against doing some landscaping and realistically they felt that there really isn't a need. However, if the board was to require them to plant pines along the perimeter of the lot they could do that.

Neal Kurk asked what he meant by the phrase they didn't see the need. We are changing all the time. It will eventually get built out and could be in the middle of a development. Mr. Kurk felt that the intent of this is to screen the complex not the tower. Attorney Wilkins stated that it is possible but speculative. He is offering up putting a row of white pines on each side of the compound as screening. Forrest Esenwine stated that the lot right now has been cleared a few years ago and is now have a regenerative process, which happens quickly in this area.

Attorney Wilkins proceeded through the 5 points as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The installation is well hidden from the surrounding area by vegetation and topography; photo simulations show little visual impact; the 100' monopine design blends with existing trees; appraisal reports submitted in the above cited Daniels case show that wireless towers in

settings similar from Forest Road is 764' and 106' from the side property lines thus maximizing distances from residences and surrounding properties; noise reports show appropriate levels for this area; and A&D Klumb Environmental's DES application and testimony with respect to wetlands on the property demonstrate that no deterioration of wetlands will result. See letter, pp 15-16 and Letter exhibits 4 D, E, F and 5.

2. That the granting of the variance will not be contrary to the public interest because: The WTF conforms to the basic purpose of the ordinance (screening), because existing height and depth of tree cover and topography is sufficient to screen views of the tower, and the monopine design also accomplishes the same, so there will be no effect on the public interest in granting the waiver. The photo simulations and balloon test confirm the sufficiency of the existing screening. Moreover, the resulting WTF will (i) serve the public interest by alleviating a significant gap in coverage, allowing collocation and enhancing communications, including emergency communications with fire, police and EMTs, (ii) conform to the purposes of the Weare Zoning Ordinance by promoting public safety and the general welfare of its residents, without creating any pollution, harm to natural areas, or being obnoxious, offensive and injurious to the neighborhood, (iii) comply with the purposes of Article 32 of the Zoning Ordinance due to the WTF's compatibility with the visual and environmental features of the Town, and (iv) meet FCC emissions regulations. See Letter, pp. 16-17 and Letter exhibits 4 C, D, E, F and 5. See also Daniels.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property because: The property's special features, including its location and topography, are especially suited to fill the gap in telecommunication coverage in the area (see Daniels); it is narrow, with steep slopes, a relatively small area of wetlands, an existing road, a large setback from Forest Road and the highest elevation at the rear, which is optimal for radio frequency needs. It is fairly secluded. Photo simulations and the balloon test show that the WTF is already adequately screened by trees and vegetation to the east and the south. While clearing has occurred in the buffer area around the compound on the north and the west sides, there nonetheless is appropriate screening because of the west side's steep topography and the north side's serving the gravel access road. See Letter, pp. 8, 15-21 and Letter exhibits 3, 4 C, D, E, F; Klumb and Pollister testimony.
 - b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The property's location and features are especially suited to cover the existing coverage gap. Daniels. Since the north and west portions of the buffer area are already cleared and include some steep topography, there is no way to achieve a 50 foot buffer of dense tree growth. However, in any case, such buffer density is unnecessary due to the steep topography and the access road that appear to the west and north. If AT & T were to find an alternative location, clearing some other parcel for construction of a facility would kill

existing trees and defeat the purpose of avoiding environmental impact and retaining vegetation for screening. See attached letter, pp. 8, 14-15 and exhibits 3, 4 C, D; Pollister and Klumb testimony.

4. That through the granting of relief by variance, substantial justice will be done because: AT & T will be able to utilize the uniquely situated property for the proposed facility to provide needed service to a coverage gap along routes 77 and 114, without appreciable adverse effects. See Daniels. The basic goals of the Zoning Ordinance are met as stated in #2 above. See Letter, pp. 15, 21 and Letter exhibits 3, 4 C, D, E, F, 5; Pollister and Klumb testimony.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The WTF will promote the public health, general growth, safety and general welfare of the residents of Weare by providing wireless mobile communications that (i) can be relied upon in the event of an emergency, thereby contributing to residents' safety, and (ii) provide a convenience at other times. See Daniels. The proposed WTD will not generate any of the adverse effects addressed by the Zoning Ordinance. Wireless telecommunications use is allowed in the district. The screening and wetlands protection purposes of the Ordinance are fully met, as discussed above. The facility will not be obnoxious nor a nuisance. See Letter, pp. 15, 21 and Letter exhibits 3, 4C, D, E, F, 5; Pollister and Klumb testimony.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public at Large: NONE
Other Boards: NONE
Rebuttal of applicant: NONE

Being there was no further comments, questions or discussion, Vice Chairman Dearborn closed this portion of the application at 8:35 PM.

Vice Chairman Dearborn asked about any thoughts on the buffer. Mr. Kurk stated you have a compound with a fence around it and he feels the buffer could be accomplished in this case if we required two (2) rows of plantings around the compound. Vice Chairman Dearborn suggested an evergreen about six feet out from the fence.

Mr. Ruoff felt it might be wise to include some measurement around the compound of buffer. Mr. Kurk felt that 20 feet buffer would be fine. Elwood Stagakis stated that safety is more of the concern than the visual buffer.

CASE DECISIONS: Point #1: David Ruoff moved to accept point #1; Forrest Esenwine seconded the motion. Discussion: Mr. Kurk asked about modifying the buffer which would affect how he votes. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Kurk). Point #2: David Ruoff moved to accept point #2; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Kurk). Point #3aa: David Ruoff moved to accept point #3aa; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1

opposed (Kurk). Point #3bb: David Ruoff moved to accept point #3bb; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Kurk). Point #4: David Ruoff moved to accept point #4; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Kurk). Point #5: David Ruoff moved to accept point #5; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Kurk).

David Ruoff moved to grant the variance for Article 32.7.1 (F) in case #0309 subject to the following condition: That the facility be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of **20** feet from the mount, security barrier, or designated clear area for access to equipment; June Purington seconded the motion. Vote: 5 in favor (Kurk; Purington; Dearborn; Ruoff and Esenwine).

Vice Chairman Dearborn appointed Elwood to sit as a voting member for the next hearing.

Case #0609 Andrew Popp

Variance, Article 17, Section 17.1.1

The applicant is requesting permission to construct a single family home.

Tax Map 106-005

Branch Road (Private Road)

Naomi informed the board that she received a letter from Andrew Popp allowing Hugh Durack to be his representation. Mr. Durack explained that this is a piece of property the Mr. Popp bought in 1967 with one day the thought of building a home and never did. Now he would like to see if he could obtain a building permit. Mr. Durack went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: a home would be constructed, which would enhance the property values of the other homes in the community, and another resident could contribute to road maintenance costs.
2. That the granting of the variance will not be contrary to the public interest because: the matter is a private one. When I bought this property forty-two years ago, I had the right to build a structure. The Town of Weare changed its regulations and is not prohibiting building on this lot. If I was given a building permit and a structure was built, I would then contribute to the maintenance of the road, which would reduce the amount of money each family paid in the community.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: I have been paying taxes on this property for forty-two years. When I purchased the land, I had intended to build a retirement home, and the Town's zoning permitted such use of the land. Now, the Town has changed its regulation, which denies me this right that all the other homeowners have. Because of

this change in zoning, not allowing a structure to be built on this land, my investment has been diminished. I also cannot act on my original intent – to build a structure.

- bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: the benefit I seek is to fulfill the original intent of building a structure, which was allowable when I purchased the property so long ago. The hardship is that the property was rezoned, which does not allow me to build a structure. This hardship has made the property less valuable.
- 4. That through the granting of relief by variance substantial justice will be done because: I will be able to build a structure, which will add to the value of my property and the properties adjacent to my lot. Additionally, as a member of the community, I would contribute to the maintenance of the road by paying for snow removal and grading. Furthermore, the original intent of the property as so stated years ago would be reinstated, which would lift the hardship.
- 5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: the original intent of the new regulation was to reduce the liability of road maintenance during snowy weather. This particular community is a mature one and the road is established. The building of a structure would enhance the area, and an additional owner contributing to its expenses would defray the maintenance cost of the existing road.

Vice Chairman Dearborn asked how this property expects to gain access to the lot. Mr. Durack responded from the Branch Road end.

Approving Abutters: Michael Kay, 81 Branch Road, is concerned first of all the comments from the applicant on the ability of the grading and maintenance of the road. It is an association completely voluntary with 21 owners of the paying group and he questioned about the ability to help maintain as it is strictly voluntary. He also brought up that the land is for sale. Mr. Durack stated that it was several years ago but has not been listed for a very long time. The sign that is on the property has a company that is no longer in business.

Mr. Kurk asked what the current condition of Branch Road is. Mr. Kay responded that it is a dirt road with a steep hill. They purchase crushed stone and hire Brownies to grade a couple times of year. They hire a subcontractor to plow in the winter but a lot of the owners have plows. Mr. Kurk stated that there are a lot of homes already on the road and he thought that one more house wouldn't affect anything. There are a lot of houses and it seems to be busier in the summer.

David Ruoff asked if there have been any problems of getting emergency vehicles out there. Mr. Kay stated that he doesn't know. The road is sometimes slippery. The road is narrow and they use driveways to be able to pass other cars.

Disapproving Abutters: NONE

Other Boards: NONE
Public at Large: NONE
Rebuttal: NONE

Vice Chairman Dearborn closed this hearing at 9:18 PM.

DISCUSSION: David Ruoff stated he is not sure about this one but on the other hand there is an argument as it is closer to the access than a lot of the others. There is an argument to be made that it is a mature area. There could be arguments made for it as well. Neal Kurk stated that he felt that it seems that it is a pretty substantially built out.

CASE DECISIONS: Point #1: David Ruoff moved to accept point #1; June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #2: David Ruoff moved to accept point #2; June Purington seconded the motion. Vote: 3 in favor (Purington; Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis). Point #3aa: David Ruoff moved to accept point #3aa; June Purington seconded the motion. Vote: 3 in favor (Purington; Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis). Point #3bb: David Ruoff moved to accept point #3bb; June Purington seconded the motion. Vote: 3 in favor (Purington; Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis). Point #4: David Ruoff moved to accept point #4; June Purington seconded the motion. Vote: 3 in favor (Purington; Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis). Point #5: David Ruoff moved to accept point #5; June Purington seconded the motion. Vote: 3 in favor (Purington; Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis).

David Ruoff moved to grant the variance for Case #0609 with the following conditions:

1. The access to the lot (Branch Road) needs to be upgraded under the direction of the Public Works Director to a performance standard that is acceptable to allow for the safe passage of emergency vehicles from Dudley Brook Road to the driveway of the subject property. All upgrade needs to be inspected prior to the issuance of a building permit AND prior to the issuance of an occupancy permit.
2. Town of Weare Liability Disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
3. Private Road sign to be posted at the entrance of the road.
4. This variance has an expiration date of: July 7, 2011.

June Purington seconded the motion. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis).

Vice Chairman Dearborn appointed Neal Kurk to sit as a voting member for the next hearing.

Case #0709 Donald & Linda Fanny
 Special Exception, Article 19, Section 19.1.10
 The applicant is requesting permission to construct an in-law apartment.
 Tax Map 402-024 161 Pine Hill Road

Naomi informed the board that Mr. Fanny has changed his plans and will reapply at a later date.

Case #0809 Robert & Margaret Moore
Variance, Article 17, Section 171.1
The applicant is requesting permission to construct a single family home.
Tax Map 407-162 Jewett Road (Class VI Road)

Mr. Moore was present. Mr. Moore explained that he would like to build a house on this lot that he purchased in 1986. Mr. Moore went through the five points of hardship as follows:

1. There will not be a diminution of value surrounding properties as a result of the granting of this variance because: The building of this house will be similar to and consistent with other homes in the area.
2. The granting of a variance will not be contrary to the public interest because: No Town funds are used to maintain this road. This road is presently maintained by the residents on both sides of the applicant's property. It will therefore be in the public interest for the applicant's to help maintain this road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The granting of the ordinance would enable the applicants to build in an area where there are already homes on either side.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The benefit sought by the applicant cannot be realized by anything other than a variance because there is no other way a home can be built.
4. That through the granting of relief by variance substantial justice will be done because: Relief by the variance would result in justice by the owners because they would be able to use the property for their purpose of building a home. This is what the applicant's intended to do when they bought the lot 25 years ago.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: It will not be contrary to the ordinance because the zoning is residential. If the spirit of the ordinance is concerned with safety then this will necessitate improvement of the maintenance of the road which will decrease safety concerns.

Mr. Moore stated that he had only one comment in his deed with regard to covenants. He thought that was his only concern were the guidelines in the deed until he came forward to the town office and found out differently.

Approving Abutters: NONE
Disapproving Abutters: NONE

Other Boards: NONE
Public at Large: NONE

Vice Chairman Dearborn closed this hearing at 9:52 PM.

DISCUSSION: Neal Kurk stated that this seems like a different application than the previous one. This is a lot on a class VI road but both ends of the road are developed and this lot is located in the middle between undeveloped lots. This seems a little premature and the road has some serious problems. From his point of view he doesn't seem that this application meets the 5 points. This appears about as opposite from the prior application.

CASE DECISIONS: Point #1: David Ruoff moved to accept point #1; June Purington seconded the motion. Vote: 2 in favor (Purington and Esenwine) and 3 opposed (Kurk; Dearborn and Ruoff). Point #2: David Ruoff moved to accept point #2; June Purington seconded the motion. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #3aa: David Ruoff moved to accept point #3aa; June Purington seconded the motion. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #3bb: David Ruoff moved to accept point #3bb; June Purington seconded the motion. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #4: David Ruoff moved to accept point #4; June Purington seconded the motion. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine). Point #5: David Ruoff moved to accept point #5; June Purington seconded the motion. Discussion: Mr. Esenwine stated that he felt that in this case it is contrary. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine).

David Ruoff moved to grant the variance for case #0809 as requested; June Purington seconded the motion. Discussion: This lot currently is located in the center of the road and due to the location the board felt that is there the challenge exists. It is not the lot just the road. The road is the issue. Vote: 0 in favor and 5 opposed (Kurk; Purington; Dearborn; Ruoff and Esenwine). Vice Chairman Dearborn explained that in order to successfully obtain the variance, by State Law all five points of hardship must pass. In this case, none of the points passed, therefore the variance cannot be granted.

IV: OTHER BUSINESS:

JUNE 2, 2009 MINUTES: Forrest Esenwine moved to approve the June 2, 2009 minutes as written; June Purington seconded the motion, all in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 10:00 PM; Jack Dearborn seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator